

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 58 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?No

5. Whether it is to be circulated to the Civil Judge?  
No

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DIPAKBHAI R KOTHARI

Versus

SURENDRANAGAR MUNICIPALITY

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Appearance:

MR JD AJMERA for Petitioner

MR TUSHAR MEHTA for Respondent No. 1

MR KG VAKHARIA for Respondent No. 2

SERVED BY DS for Respondent No. 3

Mr. A.J.Desai A.G.P. for respondents nos. 5,6 & 7

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 07/02/96

ORAL JUDGEMENT

Rule. The pleadings of both the parties to the  
petition are complete.

2. I have heard the learned advocates for both the  
sides at length on merits. Therefore, I dispose of this

petition.

3. Dipakbhai R. Kothari of Surendranagar has filed the present petition. Though the petitioner mentioned in the cause title that this is a petition under article 226 of the Constitution of India, but as a matter of fact, it is quite clear from the contents of the petition that this is a petition under article 227 of the Constitution of India. Respondents nos 2 and 3 are the owners of the properties bearing survey numbers 308 and 324 in ward no.8 within Surendranagar Municipality. They decided to have a construction in the said plot and for that purpose they applied to the municipal authorities as well as to the Town Planning Authorities to grant permission and sanction their plan for raising the construction in the said land. The plan submitted by the respondent no.3 was approved and sanctioned by both the authorities and necessary permission was also granted in favour of the respondent no.3 for raising a construction as per the plan approved in the said land. Respondent no.3 accordingly started the said construction in the year 1991. Thereafter present petitioner approached the Collector, Surendranagar under section 258 of the Gujarat Municipalities Act, 1963(hereinafter referred to as the Act) by filing application which was numbered as Case No.18 of 1991. It was contended by the applicant-petitioner before him that the construction which the respondent no.3 was carrying out in the said land was contrary to the provisions of the building bye laws and regulations and the sanction granted by the municipal authorities as well as the Town Planning Authorities were illegal and improper and therefore, the construction in question was unlawful and he wanted the Collector to exercise his powers under section 258 of the Gujarat Municipalities Act and to stop enforcement of the sanction order passed by the municipality and to stop the construction in question. After the said application was filed before the Collector, the Collector had directed the city survey officer to have survey of the construction in question and to submit his report about the same before him. It seems that after getting said report of the city survey officer, the Collector did not supply copy of the report of the city survey officer to the present petitioner and he also did not give an opportunity of being heard to the present petitioner and proceeded to decide his application and rejected the same by his order dated 1.7.95. Thereafter present petitioner had filed SCA No. 6017/95 in this Court to challenge the said order and this Court had allowed the said SCA filed by the present petitioner by order dated 16.10.95 (Coram: A.N.Divecha.J) and the matter was remanded to the

Collector with a direction to supply the map and the surveyors report to the present petitioner and then to give opportunity of being heard and to decide the said application of the present petitioner according to law. After the remand the Collector had complied with the order of this court by giving copy of the surveyors report to the present petitioner and he had given opportunity of being heard to the present petitioner and by his order dated 18.11.95 he was pleased to reject the application of the present petitioner and hence the petitioner has come before this court.

4. It is submitted by the petitioner if the order passed by the Collector is seen, then it would be quite clear that the learned Collector has not at all complied with the directions of this court and he has not decided the points raised by the petitioner before him. It is further contended that the finding recorded by the Collector that there is no illegality in granting permission to raise the construction as well as in sanctioning the plan submitted by respondent no.3 is illegal and improper and therefore the construction in question being unlawful as it is contrary to the provisions of the building bye laws and regulations, original application filed by the present petitioner must be allowed and the permission granted by the municipal authorities as well as Town Planning Authorities to raise the said order of Collector should be quashed and set aside and direct the authorities to demolish the construction in question.

5. The respondent no.3 as well as the State Government have opposed the claim of the present petitioner. It is their contention that the decision of the Collector is quite proper and correct and said decision of the Collector could not be said to be illegal or perverse so as to interfere with the said by exercising the discretionary powers either under Article 226 or under article 227 of the Constitution of India. It is also contended that the claim of the petitioner that the Collector has not decided the controversy between the parties is also not correct.

6. If the claim of the petitioner in the main application filed by him under section 258 is considered along with the provisions to section 258i of the said Act then it would be quite clear that the claim of the present petitioner was only to the effect that the orders passed by the municipal authorities and Town Planning Authorities permitting and sanctioning the construction in question are unlawful. There is no claim in the

petition for quashing the said orders of on any other ground as provided by section 258 of the said Act.

7. The Collector had directed the city survey officer to have the survey of the construction in question and the city survey officer had filed his report after carrying out the said survey. It is quite clear that the Collector had found that the report of the city survey officer who had carried out the survey was clearly showing that the construction in question was not by commission of any encroachment in the public property. If the submissions made by the learned advocate before the Collector are considered, then it would be clear that the only submission made on behalf of the petitioner was that the report given by the city survey officer was not correct one. But from the order of the Collector, it would be quite clear that no material was produced before him to show as to how that report given by the city survey office was incorrect. The Collector has further found and a finding of fact is recorded by him that the construction in question was carried out as per the sanction and permission granted by the municipal authorities as well as Town Planning authorities. The Collector had further found that the claim of the petitioner that the respondent no.3 had not left any open land around their construction and that they had carried out construction upto 95 percent as against 40 percent was not tenable in view of the fact that these provisions were not applicable to the land in question as that provision of utilising 40 percent area was intended for rural area. The Collector has also further found that the construction in question was not contravening any provisions of law and therefore, in the circumstances he had found no reason to interfere with the orders of the municipal authorities as well as Town Planning Authorities. The order of the Collector shows that when the earlier complaint was received by him, he had directed by his order to the Town Planning Committee to reconsider the claim of respondent no.3 and find out as to whether the proposed construction was according to the rules and regulations The Town Planning Committee had found that the construction was as per the Rules and regulations. The Collector therefore, has held that when both the authorities found that the construction in question was as per the rules and regulations and as he had no materials before him to hold that claim of the City Survey Officer as well as Town Planning Officer was improper or incorrect, he has accepted the same. The above finding recorded by the Collector are on the strength of the materials before him and it could not be said that those findings of the Collector are either

illegal or erroneous or perverse.

8. The learned advocate for the petitioner has urged before me that the Collector has recorded in his finding that from the materials it was not possible to hold that respondent no.3 had committed any encroachment on the road and he has further observed that it is not possible for him to know whether there was any encroachment underground by the construction in question. According to the learned advocate for the petitioner that finding of the Collector clearly shows that the Collector has not finally decided the said controversy. The Collector had to decide as to whether in fact there was any encroachment by the respondent no.3. If the materials produced before the Collector was not sufficient for him to come to a conclusion that in fact there was no encroachment then that finding of him cannot be said to be erroneous or illegal. It is also not pointed out at the time of argument by pointing out any material to show that the finding recorded by the Collector are either erroneous or illegal so as to interfere with the same by exercising the discretionary power under article 227 of the Constitution of India. In view of the above discussion I hold that there is no merit in this petition and the same deserves to be dismissed. Accordingly the petition is dismissed with no order as to costs. Rule discharged.

9. The learned advocate for the petitioner wants me to continue the order of status quo. The respondent no.3 is involved in this litigation since the year 1991. There is no encroachment upon any fundamental, rights or statutory rights of the present petitioner. There is concurrent finding that there is no commission of any illegal or unreasonable act by respondent no.3. Therefore, in the circumstances, it would be travesty of justice to continue the order of status quo. I therefore, reject that request.

(S.D.Pandit.J)